

# MONTANA STATE AUDITOR

BUSINESS, LABOR & ECONOMIC AFFAIRS

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JOHN MORRISON  
STATE AUDITOR



COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

February 2, 2007

## Memorandum

To: Senator Bales, Chairwoman Cocchiarella and the members of the Senate Business, Labor and Economic Affairs Committee

From: Mary Arnold, Montana State Auditor's Office

Regarding: Senate Bill 343 and the NAIC draft Independent Adjuster Licensing Model Act

The Montana Department of Insurance, requested from the NAIC permission to distribute the most recent draft of the Independent Adjuster Licensing Model Act currently underdevelopment.

This draft does not include comments on the draft that were due on January 26, 2007, from the industry and regulators on the NAIC (National Association of Insurance Commissioners) Adjuster Licensing Model Act Subgroup.

If you need additional information regarding the model act process or the content of the 12/10/06 draft, please let me know.

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Draft: 12/10/06  
*A new model*

## INDEPENDENT ADJUSTER LICENSING MODEL ACT

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### Section 1. Purpose and Scope

This Act governs the qualifications and procedures for the licensing of adjusters. It specifies the duties of and restrictions on adjusters. To the extent that any other provision of state law requires a license otherwise required by this Act, such other provision is hereby superseded.

**Drafting Note:** It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

### Section 2. Definitions

- A. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity. PALMA Section 2B
- B. "Catastrophic disaster" according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.

**Drafting Note:** Some states may need to expand the authority to include the Commission of Insurance if they are authorized to declare a catastrophic disaster.

- C. "Company Employee Adjuster" means an individual employee of an insurer who is registered in this state to act as an adjuster on behalf of his or her employer.
- D. "Employee" means a common law employee as described in 20 CFR § 404.1007.
- E. "Fingerprints" for the purposes of this Act, means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.
- F. "Home State" means the District of Columbia and any state or territory of the United States in which an adjuster maintains

his or her principal place of residence or principal place of business and is licensed to act as an adjuster if such state requires such licensure. In the case of an adjuster residing in, or having a principal place of business in, a state that does not license adjusters, or does not license adjusters for the line of business sought, the adjuster may designate as their "Home State" any state in which the adjuster is licensed in good standing after having met all pre-licensing requirements as if they were a resident adjuster in that state. [NAIC's PALMA Section 2E].

- G. "Independent Adjuster" means a person, other than a public adjuster, who undertakes to ascertain and determine the amount of a claim, loss or damage, under insurance contracts or self-insurance arrangements covering property, casualty, or workers compensation risks, and undertakes to effect settlement of such claim, loss or damage on behalf of that person.
- H. "Independent Apprentice Adjuster" means one who is qualified in all respects as an adjuster except as to experience, education and/or training. [NAIC's Public Adjuster Licensing Model Act (PALMA) Section 2A].
- I. "Individual" means a natural person. [NAIC's PALMA Section 2F]
- J. "Person" means an individual or a business entity. [NAIC's PALMA Section 2G]
- K. "Uniform Individual Application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals. [NAIC's PALMA Section 2I]
- L. "Uniform Business Entity Application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities. [NAIC's PALMA Section 2J].

**Drafting Note:** Subsection L is optional and would apply only to those states that have a business entity license requirement.

**Drafting Note:** If any term is similarly defined in a relevant section of the state's insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: "[term] is defined in [insert appropriate reference to state law or regulation]."

### Section 3. License or Exemption

#### A. License

A person shall not act or hold himself out as an independent adjuster in this state unless the person is licensed as an independent adjuster in accordance with this Act, or is exempt from licensure as an adjuster under this Act.

An individual shall not act or hold himself out as a company adjuster unless they are an employee of an insurer who is registered in this state to act as an adjuster on behalf of his or her employer.

A business entity acting as an independent adjuster is required to obtain an independent adjuster license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:

- (1) The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation; and
- (2) The business entity has designated a licensed independent adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

#### B. Adjuster Lines of Authority

The state may provide for and issue licenses or registrations limited to specified lines of authority in the manner otherwise provided for the issuance of a license under this chapter. At a minimum, the department shall provide for the following license types:

- (1) All Lines Adjuster;

- (2) Property and Casualty Adjuster; and
- (3) Workers Compensation Adjuster.

**Drafting Note:** All Lines Adjuster authority must be inclusive of every kind of insurance requiring adjuster licensing in the state. The license shall specifically designate the kinds of insurance that may be handled by the person. The person may not adjust claims in a kind of insurance other than that for which the adjuster is specifically licensed. [Derived from TEX. INS. CODE § 4101.102(c) (2005)].

### C. Exceptions to License Requirement

Notwithstanding the provisions of this Section, a license as an adjuster shall not be required of the following:

1. An attorney-at-law when acting in his or her professional capacity as an attorney;
2. A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed independent adjuster, including, but not limited to, photographers, estimators, appraisers, private investigators, engineers, and handwriting experts; [Derived from TEX. INS. CODE § 4101.002(3) (2006); UTAH CODE ANN. § 31A-26-201(2)(g) (2006)];
3. A person who performs clerical duties and does not negotiate with parties relative to disputed or contested claims; [Derived from TEX. INS. CODE § 4101.002(5) (2006); MISS. CODE ANN. § 83-17-401(a)(v) (2006)];
4. A licensed health care provider or employee of a licensed health care provider, who is not responsible for determining compensability;
5. A managed care organization or any employee thereof, an employee of any organization providing managed care services so long as that employee is not determining compensability;
6. A person who settles reinsurance or subrogation claims between insurers;
8. An officer or director of an insurer authorized in this state; or any manager thereof, individual or corporate, or the manager, agent or general agent of any department thereof, individual or corporate, or attorney in fact of any reciprocal insurer or Lloyds underwriter. [Derived from N.Y. INS. LAW § 2101(g)(1)(A) (2006)];
9. A company employee adjuster. [Derived from NEV. REV. STAT. ANN. § 684A.020(d) (2006)];
10. A person acting under the authority of a license issued pursuant to [insert applicable cross reference to any Third Party Administrator (TPA) licensing statutes applicable in the enacting jurisdiction] provided that the person does not act as an adjuster with respect to any type of insurance for which an adjuster license is required under this Act other than workers compensation or disability insurance;
11. A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract. [NAIC PALMA Section 4D2];
12. A self-insured or an employee of a self-insurance arrangement;
13. In the event of a state or Federally-declared catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, an adjuster who is otherwise qualified to adjust claims arising there from. Such a catastrophe or emergency exemption shall remain in force for a period not to exceed 180 days, unless extended for an additional period of 90 days by the commissioner. The fee for a catastrophe or emergency exemption shall be in an amount not to exceed \$50 as determined by the Commissioner and shall be due and payable within 30 days of the start of the use of such an exemption. [FLA. STAT. § 624.501 (2006) for fee amount].

**Drafting Note:** The model act is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by the license holder. If licensed as an adjuster, third party administrators or similar business entity licensees should not be required to obtain separate adjuster licenses, provided that the type of claims adjusted do not include life, health, or

annuity insurance claims, other than disability claims.

#### Section 4. Application for License

- A. A person applying for an independent adjuster license shall make application to the commissioner on the appropriate NAIC uniform application or other format prescribed by the commissioner.
- B. The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief.
- C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

**Drafting Note:** This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

#### Section 5. Home State Individual and Business Entity License

- A. Before issuing an independent adjuster license to an individual applicant under this section, the commissioner shall find that the individual:
  - (1) Is eligible to designate this state as his or her home state or is a nonresident who is not eligible for a license under Section 8;
  - (2) Has not committed any act that is a ground for denial, suspension, or revocation of license set forth in Section 10;
  - (3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the commissioner;
  - (4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in Section 12 of this Act;
  - (5) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; [NAIC's PALMA Section 5A(5)];
  - (6) Has an office in a designated home state with public access by reasonable appointment and/or regular business hours. [NAIC PALMA Section 5A(6)];
  - (7) Is at least eighteen (18) years of age; and [NAIC's PALMA Section 5B(1)];
  - (8) Has successfully passed the adjuster examination. [NAIC's PALMA Section 5B (2)] or qualifies for an exemption from examination under Section 6 of this Act.
- B. If the applicant is a business entity:
  - (1) The commissioner shall find:
    - (a) That the business entity is a corporation, partnership, or other entity organized under the laws of this state or any other state or territory of the United States and, if so required, admitted to conduct business in this state by the secretary of state; and
    - (b) That the business entity has submitted the application, appropriate fees, and any other information required by the department.

- (2) Has not committed any act that is a ground for denial, suspension, or revocation of license
- (a) The commissioner may refuse to issue a license if the commissioner determines that the business entity or any officer, director, partner, or other person who has the right or ability to control the business entity is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had any insurance license revoked for cause or currently placed on suspension by any jurisdiction, or of the commissioner determines that any grounds set forth in Section 10 of this Act.
- (3) The business entity shall maintain the ability to pay any sums up to one (\$1) million which it might become legally obligated to pay on account of any claim made against it by any person caused by any negligent act, error, or omission of the business entity or any person for whose acts the business entity is legally liable in the conduct of its business under this code.

Such ability to pay shall be maintained in one of the following ways:

- (a) An errors and omissions policy insuring such business entity or partnership against errors and omissions in at least the sum of one (1) million issued by an insurance company licensed to do business in this state or, if a policy cannot be obtained from a company licensed to do business in this state, a surplus lines insurance policy; or
- (b) A bond executed by such business entity as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$1 million, payable to the department for the use and benefit of customers of such business entity, conditioned that such business entity shall pay any final judgment recovered against it by any customer. A binding commitment to issue such a policy or bond shall be sufficient in connection with any application for license. [NAIC PALMA Section 12A(1)].
- C. The commissioner may require any documents reasonably necessary to verify the information contained in the application. [NAIC's PALMA Section 5C].

#### **Section 6. Examination**

- A. An individual applying for an independent adjuster license under this act shall pass a written examination unless exempt pursuant to Section 8. The examination shall test the knowledge of the individual concerning the duties and responsibilities of an independent adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner. [NAIC PALMA Section 6A].
- B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Drafting Note:** A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other precensing requirements.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

#### **Section 7. Exemptions from Examination**

- A. An individual who applies for an independent adjuster license in this state who was previously licensed as an independent adjuster in another state based on an independent adjuster examination shall not be required to complete any

prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates or subsidiaries, indicates that the adjuster or his or her company is or was licensed in good standing. [NAIC's PALMA Section 7A].

- B. A person licensed as an independent adjuster in another state based on an independent adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 5. No prelicensing examination shall be required of that person to obtain an independent adjuster license. [NAIC's PALMA Section 7B].
- C. An individual who applies for an independent adjuster license in this state who was previously licensed as an independent adjuster in this state shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state. [NAIC's PALMA Section 7C].
- D. An individual who applies for an independent adjuster license in this state shall not be required to complete any prelicensing examination if the commissioner determines that the individual has worked as a licensed independent adjuster, or is a graduate of an American Bar Association recognized law school, or has experience or special education or training as to the handling of loss claims under insurance contracts covering the types of insurance for which adjusting activities are authorized under the license applied for and of sufficient duration and extent to make the individual reasonably competent to fulfill the responsibilities of an independent adjuster.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

#### **Section 8. Nonresident License Reciprocity**

- A. Unless denied licensure pursuant to Section 13, a nonresident person shall receive a nonresident adjuster license if: [NAIC's PALMA Section 8A].
  - (1) The person is currently licensed as a resident adjuster and in good standing in his, her, or its home state; [NAIC's PALMA Section 8B(1)].
  - (2) The person has submitted the proper request for licensure, has paid the fees required by [insert appropriate reference to state law or regulation] [NAIC's PALMA Section 8A(2)], and, if a business entity, has provided proof of financial responsibility as required in Section 5 of this Act; and
  - (3) The person has submitted or transmitted to the commissioner the appropriate completed application for licensure [NAIC's PALMA Section 8A(3)]; and
  - (4) The person's designated home state awards nonresident adjuster licenses to persons of this state on the same basis. [NAIC's PALMA Section 8A(4)].
- B. The commissioner may verify the adjuster's licensing status through any appropriate database, including the producer database maintained by the (NAIC), its affiliates, or subsidiaries. [NAIC's PALMA Section 8B]
- C. As a condition to continuation of an independent adjuster license issued under this Section, the licensee shall maintain a resident independent adjuster license in his or her home state. The non-resident independent adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state independent adjuster license terminates for any reason, unless the independent adjuster has been issued a license as a resident independent adjuster in his or her new home state. Notification to the state or states where non-resident license is issued must be made as soon as possible, yet no later than thirty (30) days of change in new state resident license. Licensee shall include new and old address. A new state resident license is required for non-resident licenses to remain valid. The new state resident license must have reciprocity with the licensing non-resident state(s) for the non-resident license not to terminate.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section.

Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

### Section 9. License

- A. Unless denied licensure under this Act, persons who have met the requirements of this Act shall be issued an independent adjuster license. [NAIC's PALMA Section 9A].
- B. Any person holding a license pursuant to this provision shall not be required to hold any other adjuster or insurance or self-insurance administrator license in this state pursuant to [insert applicable TPA law cross reference] or any other provision, including, but not limited to, licenses by the [Workers Compensation Commissions, the Department of Labor or other applicable cross reference] provided that it does not act as an independent adjuster with respect to life, health or annuity insurance other than disability insurance.

**Drafting Note:** The model act is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by the license holder. If licensed as an adjuster, third party administrators or similar business entity licenses should not be required provided that the type of claims adjusted do not include life, health, or annuity insurance claims, other than disability claims.

- C. An independent adjuster license shall remain in effect unless revoked, terminated, or suspended as long as the request for renewal and fee set forth in [insert appropriate reference to state law or regulation] is paid and any other requirements for license renewal are met by the due date. [NAIC'S PALMA Section 9B].
- D. A licensed independent adjuster shall be subject to [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- E. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, within thirty (30) days of the change. [NAIC's PALMA Section 9C].
- F. An independent adjuster who allows its license to lapse may, within twelve (12) months from the due date of the renewal, be issued a new independent adjuster license upon the commissioner's receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required for the issue of the new independent adjuster license. The new independent adjuster license shall be effective the date the commissioner receives the request for renewal and the late payment penalty. [NAIC's PALMA Section 9E].
- G. Any independent adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one (1) year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one (1) year from date of lapse, the person shall reapply for the license under this Act. [NAIC PALMA Section 9F]
- H. An independent adjuster who is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The independent adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures. [NAIC's PALMA Section 9G].
- I. The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary. [NAIC's PALMA Section 9H].
- J. In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. [NAIC's PALMA Section 9I].

### Section 10. Apprentice Independent Adjuster License [Optional]



- A. The apprentice independent adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of an independent adjuster as defined in [NAIC PALMA Section 10A].
- B. The apprentice independent adjuster license shall be subject to the following terms and conditions:
- (1) An attestation/certification from a licensed independent adjuster (licensee) shall accompany an application for an initial apprentice independent adjuster license assuming responsibility for all actions of such applicant;
  - (2) The apprentice independent adjuster is authorized to adjust claims in the state that has issued licensure only;
  - (3) The apprentice independent adjuster shall not be required to take and successfully complete the prescribed independent adjuster examination;
  - (4) The licensee shall at all times be an employee of an independent adjuster and subject to training, direction and control by a licensed independent adjuster;
  - (5) The apprentice independent adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;
  - (6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed independent adjuster;
  - (7) Compensation of an apprentice independent adjuster shall be on a salaried or hourly basis only; and
  - (8) The licensee shall be subject to suspension, revocation, or conditions in accordance with Section 11 of this Act.

**Section 11. License Denial, Non-renewal, or Revocation**

- A. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions for any one or more of the following causes: [NAIC's PALMA Section 11A]
- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application; [NAIC's PALMA Section 11A(1)]
  - (2) Violating this Code, or violating a subpoena or order of the commissioner or of another state's insurance commissioner; [NAIC's PALMA Section 11A(2)];
  - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud; [NAIC's PALMA Section 11A(3)]
  - (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business; [NAIC's PALMA Section 11A(4)];
  - (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; [NAIC's PALMA Section 11A(5)];
  - (6) Having been convicted of a felony; [NAIC's PALMA Section 11A(6)];
  - (7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud; [NAIC's PALMA Section 11A(7)];
  - (8) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; [same as NAIC's PALMA Section 11A(8)];
  - (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory; [NAIC's PALMA Section 11A(9)];

- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction. [NAIC PALMA Section 11A(10)];
- (11) Cheating, including improperly using notes or any other reference material to complete an examination for an insurance license; [NAIC's PALMA Section 11A(11)];
- (12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or [NAIC's PALMA Section 11A(12)];
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax which remains unpaid. [NAIC's PALMA Section 11A(13)]

**Drafting Note:** Paragraph (13) is for those states that have a state income tax.

- B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state's Administrative Procedure Act] for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law]. [NAIC's PALMA Section 11B]
- C. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken. [NAIC's PALMA Section 11C].
- D. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law]. [NAIC's PALMA Section 11D].
- E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law. [NAIC's PALMA Section 11E].

## **Section 12. Bond or Letter of Credit**

Prior to issuance of a license as an independent adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the insurance commissioner through a security bond or irrevocable letter of credit:

- A. A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which:
  - (1) Shall be in the minimum amount of \$20,000;
  - (2) Shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as an independent adjuster, and
  - (3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.
- B. An irrevocable letter of credit issued by a qualified financial institution, which
  - (1) Shall be in the minimum amount of \$20,000,

- (2) Shall be to an account to the commissioner and subject to lawful levy of execution on behalf of any person to whom the independent adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as an independent adjuster; and
- (3) Shall not be terminated unless at least thirty (30) days prior written notice will have been filed with the commissioner and given to the licensee.
- C. The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner.
- D. The commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.
- E. The authority to act as an independent adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

#### **Section 12. Continuing Education**

- A. An individual, who holds an independent adjuster license or who is a Company Employee Adjuster and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle. [NAIC's PALMA Section 13A].
- B. This Section shall not apply to:
  - (1) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium; or [NAIC's PALMA Section 13B(1)].
  - (2) Licensees holding nonresident adjuster licenses who have met the continuing education requirements of their designated home state and whose home state gives credit to residents of this state on the same basis. [NAIC's PALMA Section 13B(2)].
- C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of subsection A. [NAIC's PALMA Section 13C]

#### **Section 13. Record Retention**

- A. An independent adjuster shall maintain a copy of each contract between adjuster and the insurer, and a complete record of each transaction as an adjuster.
- B. Records shall be maintained for at least five (5) years after the disposition of a claim with an insured, and such records shall be open to examination by the commissioner at all times. [NAIC's PALMA Section 17B].
- C. Records submitted to the commissioner in accordance with this Section that contain information identified in writing as proprietary by the independent adjuster shall be treated as confidential by the commissioner and shall not be subject to [insert reference to open record laws] of this state. [NAIC's PALMA Section 17C].
- D. An independent adjuster shall maintain evidence of financial responsibility in a format prescribed by the insurance commissioner.

#### **Section 14. Standards of Conduct of Adjusters**

- A. An independent adjuster shall be honest and fair in all communications with the insured, the insurer and the public; [NAPIA Code of Conduct 1 & 3];
- B. Policyholders and claimants are entitled to receive courteous, fair and objective treatment at all times, and are entitled to receive prompt and knowledgeable service;

- C. An independent adjuster shall not give legal advice, and shall not deal directly with any claimant who is represented by legal counsel without the consent of the legal counsel involved;
- D. An independent adjuster shall comply with all local, state and federal privacy and information security laws, if applicable;
- E. An independent adjuster shall identify himself as an independent adjuster, and, if applicable, identify his employer, when dealing with any policyholder or claimant;
- F. An independent adjuster shall not have any financial interest in any adjustment or acquire for himself or any person any interest or title in salvage, without first receiving written authority from his principal.

#### **Section 15. Reporting of Actions**

- A. The independent adjuster shall report to the commissioner any administrative action taken against the independent adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.
- B. Within thirty (30) days of the initial pretrial hearing date, the independent adjuster shall report to the commissioner any criminal prosecution of the independent adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

#### **Section 16. Regulations**

The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act. [NAIC's PALMA Section 20]

#### **Section 17. Severability**

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected. [NAIC's PALMA Section 21]

#### **Section 18. Effective Date**

This Act shall take effect [insert date]. [NAIC's PALMA Section 22]

**Note on Citations in the Adjuster Licensing Model Act:** Some of the citations of the Public Adjuster Licensing Model Act (PALMA) in the Adjuster Licensing Model Act (ALMA) are based on word-for-word references to the PALMA text. Other PALMA citations are not word-for-word, but incorporate the essence of the PALMA language in a certain section of the ALMA text.

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